

July 22, 2003

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Wayne Knox

Date of Filing: April 22, 2003

Case Number: TFA-0028

On April 22, 2003, Wayne Knox appealed a determination issued by the Savannah River Operations Office (SR) of the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In his appeal, Mr. Knox contends that SR had failed to conduct an adequate search for documents that were responsive to a FOIA request he had filed. For the reasons detailed below, we find that SR conducted an adequate search for responsive documents and will deny the appeal filed by Mr. Knox.

I. Background

Mr. Knox filed a request in which he sought a copy of all internal and external Westinghouse Savannah River Company/Bechtel Savannah River Incorporated documents concerning the final resolution of claims and disputes under Subcontract No. AB94198P with Advanced Systems Technology. He also sought information concerning the final resolution of claims and disputes of the Inspector General investigation of allegations he made relative to his work on the Ford Building Seepage Basin Retention Tank. *See* Determination Letter at 1. On March 16, 2003, SR issued a determination which stated that the SR site searched their files and found no documents responsive to the final resolution of claims and disputes under Subcontract No. AB94198P with the Advanced Systems Technology portion of Mr. Knox's request. SR further informed Mr. Knox that the Headquarters Office of Inspector General would respond directly to the portion of his request regarding the Inspector General investigation. *Id.* In his Appeal, Mr. Knox challenges the adequacy of the search conducted by SR.

II. Analysis

We have held that a FOIA request deserves a thorough and conscientious search for responsive documents. When we have found that a search was inadequate, we have consistently remanded the case and ordered a further search for responsive documents. *E.g. Todd J. Lemire*, 28 DOE ¶ 80,239 (2002); *Marlene R. Flor*, 23 DOE ¶ 80,130 (1993); *Native Americans for a Clean Environment*, 23 DOE ¶ 80,149 (1993). However, the FOIA requires that a search be reasonable, not exhaustive. "The standard of reasonableness that we apply to the agency search procedures does not require

absolute exhaustion of files; instead it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985).

In reviewing the present Appeal, we contacted officials at SR to ascertain the extent of the search that had been performed. Upon receiving Mr. Knox’s Request for Information, SR contacted individuals in the Environmental Restoration Division as well as pertinent individuals at Westinghouse Savannah River Company. These individuals manually as well as electronically searched their files using key words, including computer files containing E-mail communications, letters and other documents. In addition, Mr. Knox provided SR with the names of individuals who may have responsive documents and SR contacted them as well. According to SR, these searches yielded no documents responsive to Mr. Knox’s request. *See* Record of Telephone Conversation between Pauline Connor, SR and Kimberly Jenkins-Chapman, OHA (June 17, 2003); Record of Telephone Conversation between Adriane Smith, WSRC and Kimberly Jenkins-Chapman, OHA (July 10, 2003).

Given the facts presented to us, we are convinced that SR conducted an adequate search which was reasonably calculated to uncover documents responsive to Mr. Knox’s request. Accordingly, Mr. Knox’s Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Wayne Knox, OHA Case No. TFA-0028, on April 22, 2003, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: July 22, 2003